BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 361 19 89

Bill H 264 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on State Administration		
Hearing Date(s)	a Feb 01	✓ C	Hearing Date(s)	Mar 10	✓ C
	a Feb 06	✓ C			C
		C			C
		C			C
Date Out	a Feb 06	✓ C		Mar 10	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

1/17	INTRODUCED		
1/18	REFERRED TO TAXATION		
1/19	FISCAL NOTE REQUESTED		
1/25	HEARING		
1/25	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
3/16	TABLED IN COMMITTEE		

HB 264 INTRODUCED BY HANNAH, ET AL.
AUTHORIZE COUNTY JAIL WORK PROGRAM FOR INMATES CONVICTED OF NONVIOLENT CRIME

1/17	INTRODUCED		
1/18	REFERRED TO JUDICIARY		
1/19	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
2/01	HEARING		
2/06	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/08	2ND READING PASSED AS AMENDED	60	40
2/10	3RD READING PASSED	58	37
	TRANSMITTED TO SENATE		
2/11	REFERRED TO STATE ADMINISTRATION		
3/10	HEARING		
3/11	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	49	0
3/15	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/17	2ND READING AMENDMENTS CONCURRED	88	2
3/18	3RD READING AMENDMENTS CONCURRED	83	8
3/23	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 361 EFFECTIVE DATE: 10/01/89		

HB 265 INTRODUCED BY STRIZICH
REVISE AND REORGANIZE OPTIONS FOR DISPOSITION OF TROUBLED YOUTHS
BY REQUEST OF DEPARTMENT OF FAMILY SERVICES

1/17	INTRODUCED		
1/18	REFERRED TO JUDICIARY		
1/27	HEARING		
1/30	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/02	2ND READING PASSED	97	0
2/04	3RD READING PASSED	95	0
	TRANSMITTED TO SENATE		
2/06	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMMITTEE REPORT--BILL CONCURRED		
3/07	2ND READING CONCURRED	50	0
3/09	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		

HOUSE BILL NO. 264

INTRODUCED BY HANNAH, BENGTSON

IN THE HOUSE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 18, 1989	FIRST READING.
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 58; NOES, 37.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 11, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 13, 1989	SECOND READING, CONCURRED IN.
MARCH 15, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1989	RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 18, 1989

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 264

INTRODUCED BY Hank Bengtson

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING COUNTY JAIL WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL; PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM; AND AMENDING SECTION 7-32-2208, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. **County jail work program.** (1) A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor pursuant to 7-32-2223.

Section 2. **Operation of county jail work program.** (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of [section 3] to work on county projects or for county departments as designated by the board of county commissioners.

(2) A person participating in a county work program may not be physically confined in the county jail during the course of his participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

(3) In order to ensure public safety, the sheriff may in his discretion deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(4) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at

LC 0342/01

INTRODUCED BILL
HB 264

a time and place scheduled for participation in a program constitutes the offense of escape.

Section 3. Inmate eligibility for participation. A person may be permitted to participate in a county jail work program if he:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, or any other offense in which violence is an element of the crime or for an offense which during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace, or his successor; and

(4) has applied to participate to the county sheriff, and the sheriff has approved the participation.

Section 4. Section 7-32-2208, MCA, is amended to read:

"**7-32-2208. Actual confinement of prisoners required.** A prisoner committed to the county jail for trial~~,~~ ~~for~~ or examination~~,~~ or~~,~~ ~~upon conviction for~~ except as provided in [sections 1 through 3], a prisoner convicted of a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process or pursuant to a program established by law, it is an escape."

-End-

LC 0342/01

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB264 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The Legislation authorizes county jail work programs, provides that a person convicted of a nonviolent offense may volunteer to do designated work for the county in lieu of incarceration in the county jail; provides that the program is to be supervised by the county sheriff; and provides that the crime of escape is applicable to a person participating in the program.

ASSUMPTIONS:

1. No impact on state level revenue or expenditures.
2. No data is available to project county impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

In counties where the program is not authorized by the county Commissioners, there will be no impact. The impact in other counties is unknown.

Ray Shackleford 1/25/89
BUDGET DIRECTOR DATE

Tom Hannah 1/27/89
TOM HANNAH, PRIMARY SPONSOR DATE

HEARING ON HB 264

Presentation and Opening Statement by Sponsor:

Representative Tom Hannah distributed copies of testimony from the Montana Magistrates Association, Mr. Wallace A. Jewell, a copy of which is attached as Exhibit 12.

Representative Hannah indicated that, when they go meet with their county commissioners and local elected officials, they have a list of bills they would like the people who represent their area to carry, and noted this is one that Senator Bengtson and he agreed to work on. He indicated it is a simple, straightforward bill, and referred the committee to page 1, line 6, noting that he thinks the title very clearly states what this is all about. He reported it is to authorize the counties to set up a jail work program for non-violent offenders to volunteer for designated work. He noted the example given to him in Yellowstone County, by the commissioners, is that they have an extraordinary number of miles of roads which have rocks bigger than the allowable size, and that this creates problems for the rural people who drive there, as far as alignment, and all kinds of problems. He indicated they would not hire the county road crew, or anybody else to do this, but that they could allow people to trade off, rather than staying in jail, by working a day off going out and throwing rocks into the barrow pit. He indicated there is a variety of things that could be done which would help with the jail management.

Representative Hannah then referred to page 1, line 15, Section 1, which allows the inmate to live at home, not have to stay in jail, and report to work every morning, and that, for every day he works, he gets a day off of his sentence, noting that is subsection 2, line 21. He further indicated that page 2, line 4, 7-32-2223, refers to labor on the public works, indicating they are talking about county projects. He stated that Section 2 allows the commissioners to set this program up, and allows the sheriff to run it because he needs to manage his own jail. He noted it allows them to work on county projects, that it makes a provision for an 8 hour work day, and for one work day to be the same as one day of sentencing. He pointed out that there was an amendment put on in the House, at the bottom of sub (1) on page 2, which seeks to clarify that they are talking about public projects. He indicated there was some concern that inmates would be asked to cut the commissioner's lawn, or whatever, and that is why that amendment was put on.

Representative Hannah stated that an important part is sub (4), which deals with the escape provisions. He indicated that, on page 3, lines 5, 6, 7, 8, provide that, if someone does not show up for work, they will be treated as an escapee, noting they tried to put some teeth in it, saying that a person needs to be committed to working off their sentence. He then indicated that new section 3, which starts on line 10, page 3 of the bill, deals with who would be eligible for the program. He pointed out that it is non-violent offenders, primarily, noting the House committee did not think it was appropriate to have somebody who was in jail for domestic abuse, or incest, to be living at home and working off their time, so they approved that as an exclusion for people that would be eligible for the program.

Representative Hannah stated he has an amendment, which he asked Lee Heiman to put together, and which is at the request of Representative Ramirez who, when the bill was on the House floor, had some concerns about the open-endedness, as far as the sheriff's control of the program. He distributed copies of the amendment, a copy of which is attached as Exhibit 13. He noted he was persuaded that Representative Ramirez was right about that concern. Representative Hannah then noted that he tried to put this together, and that the committee will have to check it because he could not make it fit. He indicated the amendment basically provides that the sheriff lay down, in cooperation with the county commissioners, an objective plan for how inmates may participate in the program. He noted this is so they don't get into a patronage program where the sheriff says he likes this inmate, and doesn't like that one, he has one job spot available, and 2 potentially qualified inmates, and will use this as a means to exercise his ultimate authority as to whether or not somebody should be in jail, or stay at home and work during the day. Representative Hannah indicated this is designed so that the sheriffs establish an objective criteria as to who can be a part of the program, and how that works. He indicated that the last section of the bill, which is new section 5, deals with codification of the escape problem, or concern. He noted it is purely optional for both the counties and the inmates, the people it will affect.

Representative Hannah reported that their county has a new jail which is already full. He indicated they have non-violent offenders who could easily be doing something else, which would allow them to put the more violent offenders in jail, and allow some of these people to work off some of their time in a way that would be more productive for the county, and for the inmates. He noted his commissioners assured him

that they are talking about jobs for which they absolutely are not going to have hired done, so there is not a competition problem. He indicated he thinks it is a great idea, and it is something that will relieve some of the tensions of budgeting and the mandatory requirements for the county prisons.

List of Testifying Proponents and What Group they Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

Q. Senator Vaughn asked if this is set up strictly by the commissioners and the sheriffs and, if a judge sentences a person to jail, does the judge have anything to say about whether they get a work sentence.

A. Representative Hannah responded no, that the authority is in the hands of the sheriff, in conjunction with the commissioners. He indicated the commissioners will set the program up, working with their sheriff, but that it is a management tool, more than anything else, to give the sheriff some flexibility on what to do with the people who are remanded to his custody. He noted they determined it would be a problem for the court to directly sentence inmates to the work program, that they would be able to circumvent a lot of the protections which are in the bill regarding who may or may not participate.

Q. Senator Bengtson asked if there are models; if there any other counties in the state that do this.

A. Representative Hannah responded no, that this is setting up the law to allow the counties to do this, if they wish.

Q. Senator Bengtson indicated this would dictate that the sheriff and the commissioners develop the plan, which will outline the types of people, like DUIs, who have to put in a day in jail, or whatever criteria that would be used.

A. Representative Hannah responded that is right, noting the bill has structured in it restrictions as to who may not be, and noting it is designed to be non-violent offenders. He indicated there are some people who are waiting to serve time and that, as soon as a cell comes open, they go and get them.

Q. Senator Hofman indicated these people do not have to stay in the jail, that they may live at home, but asked, if they don't have a home, would they stay in the jail.

A. Representative Hannah responded those are some of the questions which are not specifically detailed in the bill. He indicated the bill simply says they can live at home, wherever home might be. He noted that, if they don't have a home, he would assume the sheriff and commissioners would have to figure out how they are going to address that when they do, in fact, get a particular individual. He indicated that is why he said some of the criteria needs to be outlined, through the language in the amendments, to allow the sheriff to do that. He pointed out that the vast majority of people have someplace they call home, and this provides that, rather than stay in jail for their 20 day or 10 day sentence, they can stay at home, and do the county work program during the day, which allows those people to stay in contact with their families, allows them to stay out of jail, and work off their sentence. He stated he thinks it is a good idea.

Q. Senator Bengtson indicated she is thinking of, for instance, the DUIs. She noted that all of us have had people in our communities who have had their families disrupted by this punishment, and this would allow them to stay at home and do the work. She pointed out that they are non-violent, and we're getting more of them all the time.

A. Representative Hannah responded absolutely.

Q. Senator Hofman said it would seem to him that they could run into a problem. He indicated if someone did something wrong, DUI or whatever, and has a job, he should be making a living, but he is on a work program and is not getting paid for it. He asked Representative Hannah if they do not also have a program whereby an offender could be incarcerated at night, and go out during the day to work his regular job.

A. Representative Hannah said this would not interfere with that in any way. He indicated that, if a person is going to be sentenced to jail for 20 days, on a consecutive day basis, that person is not going to be able to go to work, anyway, so he is not going to be able to do his regular job, if he has been sentenced. He indicated the question is where does he serve his sentence, noting this bill tries to say they think it would be more productive for that person, and the management of the jail, if they had the option to get out of jail, spend their nights at home, with their families, and work out their sentence.

Q. Senator Harding indicated she thinks Representative Hannah said this is an option, noting that there are several methods, now, one of which is when a non-dangerous offender can live at home and work, but they wear a monitor. She pointed out that this is just another option for a different type of inmate.

A. Representative Hannah responded that is correct. He stated that most of the options Senator Harding is referring to are judicial options where the judge can choose the sentence for the individual, whether it be weekends in jail, or the monitor program, or a variety of things. He indicated that, in this program, if the judge chooses to remand an inmate to the county jail, the sheriff has to deal that inmate. He pointed out there may be numerous outstanding warrants, and he does not have room to put them in jail, that there may be a murder case that comes up, which takes a slot, and those warrants keep hanging out there. He indicated it will help, on some of those warrants on non-violent offenders, who may be on the street, when they do come forward, and it is time for them to serve their sentence, if he has another alternative, as far as management of his jail, where he can keep more serious offenders incarcerated, and allow these people on the warrants to go out and work off their time.

Chairman Farrell announced the hearing on HB264 as closed.

DISPOSITION OF HB 264

Discussion:

Chairman Farrell indicated there is a proposed amendment to HB264, and asked Ms. McClure if it fits in, or not. Ms.

McClure responded it fits in, that Representative Hannah has the second reading copy, and the amendment fits with the third reading copy. Senator Harding offered a motion that the amendment to HB264 be adopted.

Senator Harding offered a motion that HB264 be concurred in as amended.

Amendments and Votes:

Motion passed by the committee that the amendment to HB264 be adopted.

Recommendation and Vote:

Motion passed by the committee that HB264 be concurred in as amended.

HEARING ON HB 267

Presentation and Opening Statement by Sponsor:

Representative Tom Kilpatrick's written testimony is attached as Exhibit 14.

List of Testifying Proponents and What Group they Represent:

Margaret S. Davis, League of Women Voters of Montana
Terri L. McBride, Montana Common Cause
Russ Brown, Montana Democratic Party

Testimony:

Ms. Davis's written testimony is attached as Exhibit 15.

Testimony:

Ms. McBride stated that, in their opinion, HB267 is a needed reform. She indicated it is consistent with good campaign laws, and they urge a do pass.

Testimony:

Mr. Brown stated they have absolutely no problem with HB267, and urged the committee's support.

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:
We, your committee on State Administration, having had under consideration HB 264 (third reading copy -- blue), respectfully report that HB 264 be amended and as so amended be concurred in:

Sponsor: Hannah (Bengtson)

1. Page 3.
Following: line 16
Insert: "(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program."
Renumber: subsequent subsections

2. Page 4, line 17.
Following: "sheriff"
Insert: ", pursuant to written policy,"

AND AS AMENDED BE CONCURRED IN

Signed: _____
William E. Farrell, Chairman

3-10-89
2:00 p.m.

scrhb264.310

Montana Magistrates Association

SENATE STATE ADMIN.
EXHIBIT NO. 12
DATE 3/10/89
BILL NO. HB264

10 March 1989

Testimony offered in support of HB264, a bill for an act entitled: "An act authorizing county jail work programs; providing that person convicted of a nonviolent offense may volunteer to do designated work for the county in lieu of incarceration in the county jail; providing that a county jail work program is to be supervised by the county sheriff; providing that the crime of escape is applicable to a person participating in a county jail work program."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports this measure. We only wish it addressed the liability problem of having someone injured while on a work-detail.

Wallace A. Jewell

SENATE STATE ADMIN.
EXHIBIT NO. 13
DATE 3/10/89
BILL NO. HB264

Amendments to House Bill No. 264
Third Reading Copy

Requested by Representative Hannah
For the Committee on State Administration

Prepared by Lee Heiman
March 10, 1989

1. Page 3.
Following: line 16
Insert: "(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program."
Renumber: subsequent subsections

2. Page 4, line 17.
Following: "sheriff"
Insert: ", pursuant to written policy,"

HEARING ON HOUSE BILL 264

Presentation and Opening Statement by Sponsor:

Rep. Hannah stated that HB 264 is at the request of his county commissioners. He stated that they have a new county jail, but it has filled up rather rapidly with non-dangerous offenders who don't have enough money to pay off their fines. HB 264 would allow them to set a voluntary county work program for those inmates who are interested in working off their fine on a day-by-day basis. It authorizes the county jail work program for non-violent offenders who may volunteer to do designated work for the county in lieu of incarceration in the county jail. It is to be supervised by the county sheriff and they are inserting a rule that if they don't show up for work they will fall under the statutes for the crime of escape. Rep. Hannah submitted a letter from Commissioner Dwight MacKay regarding the County Prison Work Program (EXHIBIT 5).

Testifying Proponents and Who They Represent:

Wally Jewell, Montana Magistrates Association
Tom Harrison, Montana Sheriffs and Peace Officers Association
Chad Stoianoff, Montana Association of Counties

Proponent Testimony:

Wally Jewell stated that he supports the idea behind this bill and submitted written testimony (EXHIBIT 6).

Tom Harrison commented that the Montana Sheriffs and Peace Officers Association is in strong support of this legislation. They realize that some supervisory talents, efforts and time is going to be involved in this, but yet these people have to invest that time anyway.

Chad Stoianoff presented to the Committee letters from Dwight MacKay, Yellowstone County Commissioner and Mike Schafer, Yellowstone County Sheriff (EXHIBIT 7 and 8).

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Darko stated that Mr. Jewell raised the question of liability. Will they be covered by Workers Compensation? Rep. Hannah stated that the word he gets from his county commissioners is that each county is going to have to establish their own means to

handle that situation.

Rep. Eudaily stated that in Missoula they have a work-fair program. The one problem that has come up is if they are under the supervision of the county sheriff, and the bill reads that they may work for other county departments or county projects. Would it be possible to insert into the bill that they are under the general supervision of the sheriff, but that they are responsible to these department heads if they are working in their particular department? Rep. Hannah stated that he would not have a problem with that. The intent is for the sheriff to be in control of his jail population. He is the guy that is going to have to make the decisions on how this program works.

Rep. Strizich questioned what would happen to the guy that has an eight hour a day job in his normal life. Will provisions be made to work around the regular job and allow the person to participate in the program as well as keeping him out of jail? Rep. Hannah stated that he would think that the person would lose his regular job. On one hand he is going to be in jail, or on the other hand working for the county. It is not a question of whether or not he is going to be at work. It comes down to whether they want to spend 90 days in jail or whether they want to work on the county work crew for 90 days.

Continuing, Rep. Strizich asked who was going to supervise the home detention? Rep. Hannah stated that they have tried to handle that through the escape provision on not showing up for work. Basically, the home detention are going to be pretty much unsupervised. The sheriff is going to establish rules for living for those folks and he assumes that they would periodically have someone call or stop in on a random basis.

Rep. Addy questioned if the passage of this bill would result in the laying off of Yellowstone County workers. Rep. Hannah stated that he did not think so. The one provision that he had heard is that there are thousands of miles of county roads in Yellowstone County. Consequently, many of those back roads have got rocks on them that are too big for a certain size. They will then send crews of workers out to clear out the oversized rocks. This type of job is not a county road job so it should not effect the jobs of the regular employees.

Closing by Sponsor: Rep. Hannah closed by stating that HB 264 will help the sheriff's and peace officers to manage their jail better. This will give them flexibility and there is a real merit to the whole concept of idleness vs. work. You can take somebody who has had a problem, and get them out doing something a little bit productive. If you have been around a prison, anything is better than sitting in that jail for 24 hours a day. This bill has great potential to

put people back into a productive means in society.

DISPOSITION OF HOUSE BILL 264

Motion: Rep. Boharski motioned DO PASS, seconded by Rep. Rice.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved to amend page 3, sub. 2, insert the crime of domestic abuse. Motion seconded by Rep. Nelson. A vote was taken and CARRIED unanimously.

Rep. Addy moved to add an additional section which could be section 5, 45-7-306, whereby they would be amending escape to specifically state that escape does include failure to show up for a work program. Rep. Addy stated that it is really tricky to have a statute other than the criminal statute itself which defines the criminal behavior. He thinks they might have trouble convicting someone of escape from this program unless they amend the escape statute. Motion seconded by Rep. Darko.

Rep. Mercer commented that the statute that is being referred to has a purposely or knowingly requirement. If a person intentionally doesn't show up then that is considered escape, but if their car might happen to break down, the sheriff would have to take that into consideration. Rep. Hannah stated that the sheriff has the discretion regarding matters of that such no matter what the law says. Sub-section 2 does state that a person subject to official detention commits the offense of escape if he knowingly or purposely removes himself.

A vote was taken on Rep. Addy's proposed amendment and CARRIED unanimously.

Rep. Daily stated that he would like to see this bill made into a pilot program for Yellowstone County. That way they could monitor the program to see how it is working out and return in a few years to incorporate the program statewide.

Rep. Addy commented that it would be difficult to turn this into a pilot program applying to Yellowstone County only. Article 5, Section 12 of the Montana State Constitution says the legislature shall not pass a special or local act when a general act is or can be made applicable.

Rep. Hannah stated that the Committee should not fear the bill as much as they are. It is permissive for the county commissioners to set it up if they chose to. The local sheriff is in charge of running it and the inmates have got the petition to get involved in it. What we have is people who would rather work off their time instead of sitting in jail doing nothing. Rep. Hannah commented that he sees it

as menial work and non-threatening to the normal job market. It would entail things that normally wouldn't get done in the county.

Rep. Brown stated that in order for them to get around not passing a special or local act, they could say all communities over 100,000.

Recommendation and Vote: Rep. Brown suggested to HOLD the bill as amended for further action.

DISPOSITION OF HOUSE BILL 204

Motion: Rep. Addy moved DO PASS, motion seconded by Rep. Aafedt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Addy moved proposed amendments submitted by Russ Cater of the Dept. of Social and Rehabilitation Services (EXHIBIT 9). Motion seconded by Rep. Gould and CARRIED unanimously.

Rep. Addy moved to amend page 3, line 6, strike "and", and on line 8 strike ".", insert ; attaches only after the department agrees to participate on a prorated basis and the cost and expenses of the civil action of the recipient. Rep. Addy stated that he is trying to distribute the burden according to the distribution of the benefit. He thinks that the department should be entitled to a pro-rated share of anything they have helped recover. Motion seconded by Rep. Darko.

Rep. Rice offered a substitute motion if in the event that the state would or would not elect to participate, their recovery is limited to 50%. If they elect to participate in the cost then they can have the full recovery. Motion seconded by Rep. Addy. A vote on the amendment was called for and CARRIED unanimously.

Recommendation and Vote: Rep. Mercer made a DO PASS AS AMENDED motion, seconded by Rep. Darko. A vote was taken and CARRIED with Rep. Brown voting No.

DISPOSITION OF HOUSE BILL 231

Motion: Rep. Gould made a DO PASS motion, seconded by Rep. Addy.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Brown moved his proposed amendments (EXHIBIT 10), motion seconded by Rep. Gould.

Rep. Mercer questioned Rep. Brown regarding those citizens who currently have a motorcycle endorsement. Would they have to go through a safety program or can they just renew their

EXHIBIT 6
DATE 2-1-89
HB 264

Montana Magistrates Association

1 February 1989

Testimony offered in support of HB264, a bill for an act entitled: "An act authorizing county jail work programs; providing that person convicted of a nonviolent offense may volunteer to do designated work for the county in lieu of incarceration in the county jail; providing that a county jail work program is to be supervised by the county sheriff; providing that the crime of escape is applicable to a person participating in a county jail work program."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports this measure. We only wish it addressed the liability problem of having someone injured on a work-detail. We would also suggest that the crime of domestic abuse be delineated in Section 3, sub. 2.

Wallace A. Jewell

County of Yellowstone

COMMISSIONERS

EXHIBIT 7
DATE 2-1-89
HB 264

(406) 256-2701

Box 35000
Billings, MT 59107

DATE: February 1, 1989

TO: Honorable Chairman David Brown
Honorable Vice Chairman Kelly Addy
Honorable Members of the House Judiciary Committee

RE: House Bill 264

Ladies and Gentlemen:

It is with great pleasure that I stand before you today to testify in total support of House Bill 264. What you have before you is a county jail work program that authorizes a county to operate a county jail work program and allow persons convicted of a non-violent offense to volunteer to do assigned work in the county in lieu of incarceration in a county jail. The program must be authorized by the board of county commissioners and supervised by the sheriff. Obviously it would be optional to each county in the State of Montana as to whether or not they implement this law. This proposal is a starting point to address the overcrowding issue in our Montana jails. It will deal with:

1) The overcrowding issue;
2) Increase jail space in Montana;
3) Save taxpayer dollars;
4) Enhance our revenues directed towards operation of county jails;
5) Allow the sheriff to manage his jail in a more efficient and effectively way.

What we plan to do. Non dangerous offenders could work on county roads and other county needs. This program would be managed by the sheriff and he would determine who fits into the program and who does not. He could then manage his population by placing inmates to work off their fines and forfeitures. As you know, many of the inmates in our Montana jails are inmates now who cannot afford to pay their fine or forfeitures. This program then would allow those persons who are not wealthy to get out of jail. The ideal here is simple -- an incentive to get out of jail, to work your way out of jail. The program could be coordinated with the sheriff and the county commissioners in each county respective to the requirements that each county may or may not want to enhance. Supervision of these inmates would be paid for by local jails and/or the county budget. The examples would

be that we would utilize non dangerous offenders on a voluntary basis, the sheriff would be in charge, and the work coordinated by the sheriff. It could be established that one day of work would equal one day of incarceration under a contract with the sheriff. In a nutshell what we would do:

1) Put people to work to help them pay for their misbehavior in our society. Bad guys do good things. For a change, the bad guys pays. These inmates could do rock work on county roads, picking up rocks, cleaning county roads, shoveling snow, sweeping walks, picking up beer cans, beautifying our counties, doing whatever it takes to make sure that bad guys do good things.

2) The tax savings should be realized in that we are not holding people in detention who are non dangerous offenders and we can <u>put dangerous</u> offenders in jail <u>who need to be placed in jail</u>. The idea here is simple: We need to be able to more efficiently and more effectively utilize cell space in our county jails.

3) This will help counties work out detention problems with each other. Perhaps an interlocal governmental agreement with each county could be arranged.

I serve on a national committee for Justice and Public Safety. We in Montana are at the threshold of making some serious decisions in regard to our county jails and how they affect Montana citizens. Jails and law enforcement concerns are eating away at our general funds throughout the State of Montana and in county government. We need this kind of legislation to look to some progressive ways of dealing with the overcrowding issue in the Montana jails. We also need to put prisoners to work. We also need programs like this that show the community we are addressing the problem and beginning to deal with the cost issue at the same time we are utilizing a program that is responsible for us all.

EXHIBIT 7
DATE 2-1-89
HB 264

February 1, 1989
Honorable Chairman David Brown
Honorable Vice Chairman Kelly Addy
Honorable Members of House Judiciary Committee

I ask for your support of this legislation and would be honored to answer any questions in its regard.

Thank you very much.

Respectfully submitted,

Dwight McKay, Chairman
Board of County Commissioners
Yellowstone County, Montana

DM/pw

EXHIBIT 8
DATE 2-1-89
264

County of Yellowstone

OFFICE OF THE SHERIFF

P.O. BOX 35017
BILLINGS, MONTANA 59107

January 31, 1989

Representative Tom Hannah
State House of Representatives
Capitol Building
Helena, MT 59620

RE: HB 264 - County Detention Work Program

Dear Representative Hannah:

This bill would be a useful bill, especially for those counties operating large facilities who may have a number of defendants sentenced to jail for non-violent offenses on misdemeanor charges.

It is for the purpose of giving the administrator authority to establish work programs in the community for those prisoners who, after being classified, are determined to be able to serve the sentence while living at home and providing community service.

The defendant would be given one day of good time for each day of work performed. This would reduce the cost of jail operations and reduce the over-crowded conditions in many jails.

This bill has my support as well as the support of the Montana Sheriffs and Peace Officers State Association.

Sincerely,

MIKE SCHAFER, SHERIFF
Mike Schafer
YELLOWSTONE COUNTY

Closing by Sponsor: Rep. Grady stated that speaking from a skiers point of view he often takes many chances and skies where he knows he shouldn't. Admittedly, he feels that it is not proper responsibility of the ski area operator in many cases when accidents happen.

DISPOSITION OF HOUSE BILL 264

Motion: Rep. Hannah made a DO PASS motion, seconded by Rep. Aafedt.

Discussion: No discussion on the motion.

Amendments, Discussion, and Votes: Rep. Addy made a motion to move the amendments (EXHIBIT 5), motion seconded by Rep. Wyatt.

Rep. Hannah offered a friendly amendment to insert "public" on page 2, line 11 of the proposed amendments. Motion CARRIED.

Rep. Brooke moved the addition of "incest" on page 3, line 11 of the proposed amendments, motion seconded by Rep. Stickney. Motion CARRIED.

Recommendation and Vote: Rep. Hannah moved DO PASS AS AMENDED, motion seconded by Rep. Addy. Motion CARRIED with a unanimous vote.

DISPOSITION OF HOUSE BILL 185

Motion: Rep. Addy moved HB 185 DO PASS, motion seconded Rep. Darko.

Amendments, Discussion, and Votes: Rep. Addy moved amendments on page 5, line 9, following "appropriate", strike public. Page 5, line 13, following "nearest", insert regional central office of the. Page 5, line 16, following "the", strike public; line 19, following "the", strike public; line 21, following "facility", insert within; following 12, strike "hours", insert hour period. Line 25, strike "facility within four hours", insert facility as soon reasonably practical. Amendments seconded by Rep. Darko.

Rep. Addy stated that the intent of the amendments is to make this bill workable for law enforcement, at the same time making sure the standard of care to the mentally ill people is not lowered.

A vote was taken on the above mentioned amendments and CARRIED unanimously.

Rep. Hannah suggested to amend page 5, line 10, Strike "anywhere in the state", motion seconded by Rep. Nelson. Amendment CARRIED with Rep.'s Wyatt, Stickney and Darko voting No.

STANDING COMMITTEE REPORT

February 6, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 264 (first reading copy -- white) do pass as amended.

Signed: _____
Dave Brown, Chairman

And, that such amendments read:4

1. Title, line 11.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "7-32-2208"
Insert: "AND 45-7-306"

2. Page 2, line 11.
Following: "commissioners."
Insert: "A person participating in a county jail work program may not have his labor or other work contracted out to a private party or be required to do labor or other work that furthers the private interests of a government employee or official. He may only be permitted or required to do labor or other work that relates to public projects, public services, or other public matters."

3. Page 3, line 11.
Following: "assault,"
Insert: "domestic abuse, incest,"

4. Page 4, following line 2.
Insert: "Section 5. Section 45-7-306, MCA, is amended to read:

"45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release

program, participation in a county jail work program under [sections 1 through 3], or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under [sections 1 through 3] and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection." "